

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

WAYNE J. GOTTSCHALK

Claimant

VS.

JOHNNIE'S SERVICE & REPAIR

Respondent

AND

TRAVELERS INSURANCE COMPANY

Insurance Carrier

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Docket No. 265,402

ORDER

Claimant appealed the February 4, 2002 Order entered by Administrative Law Judge Bryce D. Benedict. The Board placed this appeal on its summary calendar. The Director of the Division of Workers Compensation appointed Stacy Parkinson of Olathe, Kansas, to serve in place of Board Member David A. Shufelt, who recused himself from this claim.

ISSUES

This is a claim for a January 10, 2000 accident and a March 21, 2000 accident followed by a series of traumas while claimant continued to work for respondent. In December 2001, claimant and claimant's counsel filed a motion in which they requested Administrative Law Judge Bruce E. Moore to recuse himself from this claim and all other matters involving claimant's attorney.

Through a series of assignments, this claim was assigned to Administrative Law Judge Bryce D. Benedict to address the recusal requests. By Order dated February 4, 2002, Judge Benedict denied those requests. Judge Benedict concluded that the allegations made against Judge Moore, if true, failed to establish that Judge Moore would not afford claimant an impartial hearing or claimant's attorney fair treatment in future proceedings.

Claimant and claimant's attorney contend Judge Benedict erred. In their brief to the Board dated March 21, 2002, they argue the facts cited in the affidavits filed in this claim would cause a reasonable person to doubt Judge Moore's impartiality in dealings with claimant's attorney. Accordingly, claimant and claimant's attorney request the Board to issue a blanket recusal to prevent Judge Moore from adjudicating any matters in which claimant's attorney appears.

Respondent and its insurance carrier did not file a brief with the Board and, therefore, the Board is without benefit of their contentions and arguments in this appeal.

Since the filing of this appeal, the parties have settled this claim. On May 17, 2002, the parties appeared before Special Administrative Law Judge John C. Nodgaard and entered into a settlement agreement in which claimant gave up any and all rights that he might have against respondent and its insurance carrier in this claim.

The issues before the Board on this appeal are:

1. Are the requests for recusal made by claimant and claimant's attorney moot due to the parties' May 17, 2002 settlement hearing?
2. If not, should Judge Moore be removed from this claim or, in the alternative, removed from all matters in which claimant's counsel appears?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire file, the Board finds and concludes:

The request for an order removing Judge Moore from this claim is moot. On May 17, 2002, claimant entered into an agreed award, giving up any and all claims against respondent and its insurance carrier in this proceeding. Accordingly, the appeal should be dismissed.

Counsel are earnestly reminded they are officers of the Court and are obligated to advise this Board of material facts, including notice of settlements in claims that are pending before the Board. In this instance, neither counsel notified the Board that this claim had been settled. Accordingly, counsel are admonished. In the future, counsel are directed to immediately notify the Board of the settlement hearing date when they have agreed to settle a claim that is pending before the Board.

WHEREFORE, the Board dismisses this appeal.

IT IS SO ORDERED.

Dated this ____ day of June 2002.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Roger A. Riedmiller, Attorney for Claimant
 Jeffrey E. King, Attorney for Respondent and its Insurance Carrier
 Bryce D. Benedict, Administrative Law Judge
 Philip S. Harness, Workers Compensation Director